

## Fishery Conservation and Management

§ 679.61

(3) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

[61 FR 56431, Nov. 1, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 679.50, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

SOURCE: 67 FR 79734, Dec. 30, 2002, unless otherwise noted.

#### § 679.60 Authority and related regulations.

(a) Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) (Div. C, Title II, Subtitle II, Public Law 105-277, 112 Stat. 2681 (1998)) and the Consolidated Appropriations Act of 2004 (Public Law 108-199, Sec. 803). Additional regulations in this part that implement specific provisions of the AFA and Consolidated Appropriations Act of 2004 are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Record-keeping and reporting (R &R), 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements, 679.31 CDQ reserves, and 679.50 Groundfish Observer Program.

(b) Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 46 CFR part 356.

[70 FR 9867, Mar. 1, 2005]

#### § 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members?* A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

(b) *Who must comply this section?* Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BS subarea pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

(c) *Designated representative and agent for service of process.* Each cooperative must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of process comply with the regulations in this part.

(1) *What is a designated representative?* Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The

designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

(2) *What is an agent for service of process?* Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(3) *What is the term of service and process for replacing the agent for service of process?* The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. The owners and operators of all member vessels of a cooperative are responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5-year period.

(d) *Annual filing requirements.* You must file on an annual basis, with the Council and NMFS, a signed copy of your fishery cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request.

(1) *Must multi-year contracts be re-filed annually?* If your cooperative contract was previously filed with NMFS and the Council under this paragraph (d), then you may submit a renewal letter to NMFS and the Council by the filing deadline in lieu of the cooperative contract and business review letter. The

renewal letter must provide notice that the previously filed cooperative contract will remain in effect for the subsequent fishing year. The renewal letter also must detail any material modifications to the cooperative contract that have been made since the last filing including, but not limited to, any changes in cooperative membership.

(2) *Where must contracts or renewal letters be filed?* You must send a signed copy of your cooperative contract or renewal letter and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501; and to the NMFS Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

(3) *What is the deadline for filing?* The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BS subarea pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

(e) *What are the required elements in a cooperative contract?—(1) Requirements for all fishery cooperatives.* Any cooperative contract filed under this paragraph (e) must:

- (i) List parties to the contract.
- (ii) List all vessels and processors that will harvest and process pollock harvested under the cooperative.
- (iii) Specify the amount or percentage of pollock allocated to each party to the contract.
- (iv) Specify a designated representative and agent for service of process.
- (v) Include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing

taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

(2) *Additional required elements in all fishery cooperatives that include AFA catcher vessels.* A cooperative contract that includes catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced by the Regional Administrator.

(f) *Annual reporting requirement.* Any fishery cooperative governed by this section must submit preliminary and final annual written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(1) *What are the submission deadlines?* You must submit the preliminary report by December 1 of each year. You must submit the final report by April 1 of the following year. Annual reports

must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(2) *What information must be included?* The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated;

(iv) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries; and

(v) The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis.

(vi) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon.

(3) *What is the required format?* You must submit at least one copy of each annual report ready for duplication on unbound single-sided 8.5- by-11-inch paper, or in an alternative format approved in advance by the Council.

(g) *Landing tax payment deadline.* You must pay any landing tax owed to the State of Alaska under section 210(f) of the AFA and paragraph (e)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the cooperative are prohibited from harvesting pollock in the BS subarea directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of

## § 679.62

## 50 CFR Ch. VI (10–1–10 Edition)

Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

[67 FR 79734, Dec. 30, 2002, as amended at 68 FR 6836, Feb. 11, 2003; 70 FR 9868, Mar. 1, 2005; 72 FR 61076, Oct. 29, 2007; 73 FR 76166, Dec. 15, 2008; 75 FR 53069, Aug. 30, 2010]

### § 679.62 Inshore sector cooperative allocation program.

(a) *How will inshore sector cooperative allocations be made?* An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(1)(6) will receive a sub-allocation of the annual BS subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(1) *Determination of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total non-CDQ inshore pollock landings from the Bering Sea Subarea and Aleutian Islands Subarea separately, except for the F/V PROVIDIAN (USCG documentation number 1062183).

(ii) *Determination of annual landings for the F/V PROVIDIAN.* For the F/V PROVIDIAN, pursuant to Public Law 106–562, the Regional Administrator will substitute the 1992 through 1994 total Bering Sea subarea and Aleutian Islands subarea pollock non-CDQ inshore landings made by the F/V OCEAN SPRAY (USCG documentation number 517100 for the purpose of determining annual cooperative quota share percentage.

(iii) *Offshore compensation.* If a catcher vessel made a total of 500 or more mt of landings of non-CDQ Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041);

or OCEAN PHOENIX (USCG documentation number 296779) over the 3-year period from 1995 through 1997, then all non-CDQ offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iv) *Best two out of three years.* After steps (a)(1)(i) and (ii) of this section are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for the BS subarea that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for the BS subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations.* (Effective April 1, 2005) Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the proposed and final BSAI harvest specifications notice.

(b) *What are the restrictions on fishing under a cooperative fishing permit?* A cooperative that receives a cooperative fishing permit under § 679.4(1)(6) must comply with all of the fishing restrictions set out in this subpart. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the